

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ALVIN J. HAMMERSCHMIDT

Claimant

VS.

OXY USA, INC.

Respondent

AND

NATIONAL UNION FIRE INSURANCE CO. NY

Insurance Carrier

Docket No. 166,132

ORDER

ON the 7th day of December, 1993, the application of the claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Shannon S. Krysl, on November 4, 1993, came on for oral argument by telephone conference.

APPEARANCES

Claimant appeared by his attorney, Curtis E. Watkins, of Kingman, Kansas. The respondent and its insurance carrier appeared by their attorney, Jeffery R. Brewer, of Wichita, Kansas. There were no other appearances.

RECORD

The record before the Appeals Board is the same as that considered by the Administrative Law Judge as specifically set forth in the her Award of November 4, 1993.

STIPULATIONS

The stipulations set forth by the Administrative Law Judge in her Award of November 4, 1993, are hereby adopted by the Appeals Board for purposes of this order.

ISSUES

- (1) What is the nature and extent of claimant's disability, if any?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(1) From a personal injury by accident arising out of and in the course of his employment with the respondent the claimant has sustained two separate scheduled injuries. The April 26, 1991, injury to the right knee has resulted in a ten percent permanent partial disability to the right lower extremity. The injury of July 6, 1991, to the left knee has resulted in a ten percent permanent partial disability to the left lower extremity.

The Workers Compensation Appeals Board on review of any act, finding, award, decision, ruling or modification of findings or awards of the Administrative Law Judge shall have the authority to grant or refuse compensation, or to increase or to diminish the award of compensation or to remand any matter to the Administrative Law Judge for further proceedings. 1993 Session Laws of Kansas, Chapter 286, Section 53(b)(1).

Having reviewed the entire evidentiary record filed herein, and in addition to the stipulations of the parties, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed for the reasons set forth in said Award. The Appeals Board does specifically approve and adopt the findings of fact and conclusions of law of the Administrative Law Judge as are specifically set forth in her Award of November 4, 1993, and incorporate said findings and conclusions herein as if specifically set forth.

Claimant contends that the separate and distinct injuries to his right knee and left knee should be treated as one single injury to the body as a whole. It is argued that claimant's continued work from the date of the first accidental injury on April 26, 1991, until he injured his other knee by accidental injury occurring on July 6, 1991, somehow aggravated the right knee through the wear and tear of claimant's regular job duties. It is stated that obviously claimant was using his right knee when he injured his left knee on July 6, 1991, and that he continued to use both knees simultaneously until he was taken off work by the treating physician on August 28, 1991.

Under the facts and circumstances of this case and taking into consideration the record as a whole, the Appeals Board finds that the weight of the credible evidence supports two separate and distinct injuries caused by traumatic and sudden injury to separate scheduled members of claimant's body. The evidence does not establish a series of microtraumas nor does it otherwise support any connection between the right knee injury and the left knee injury.

The Appeals Board is persuaded by the testimony of Dr. McQueen that the preexisting osteoarthritis and polymyalgia rheumatica were neither aggravated nor accelerated as a result of the two separate traumatic injuries to each knee. The Appeals Board finds that the rationale of the Court of Appeals in Rodriguez v. Henkle Drilling & Supply Co., 16 Kan. App. 2d 728, 828 P.2d 1335 (1992), rev. denied 251 Kan. 939 (1992), is applicable to this case. The evidence in this case is insufficient to support a finding of simultaneous injury to both knees of the claimant caused either by aggravation from repetitive use or a single traumatic event so as to remove the injuries from the schedule of K.S.A. 44-510d and allow compensation for a general bodily disability.

The Appeals Board does find that the claimant is entitled to compensation based upon scheduled injuries to the leg which would allow for 200 weeks under the schedule as opposed to 190 weeks which was apparently utilized by the Administrative Law

Judge.

WHEREFORE, an award of compensation is hereby made in accordance with the above stipulations and findings, in favor of the claimant, Alvin J. Hammerschmidt, and against the respondent, OXY USA, Inc., and its insurance carrier, National Union Fire Insurance Company of New York, for accidental injuries sustained on April 26, 1991 and July 6, 1991.

For the injury of April 26, 1991, the claimant is entitled to 20 weeks of permanent partial disability compensation at \$278.00 per week for a ten percent permanent partial scheduled injury to the right knee, making a total award of \$5,560.00, computed as follows: 200 weeks on the schedule minus no weeks of temporary total disability compensation equals 200 weeks x 10% disability = 20 compensable weeks at the rate of \$278.00 per week, making a total permanent partial disability award of \$5,560.00.

For the injury of July 6, 1991, the claimant is entitled to 15 weeks of temporary total disability compensation at the rate of \$289.00 per week, or \$4,335.00 followed by 18.5 weeks in the amount of \$289.00 per week for a ten percent permanent partial scheduled injury to the left knee, in the amount of \$5,346.50 for a total award of \$9,681.50, computed as follows: 200 weeks on the schedule minus 15 weeks of temporary total disability compensation equals 185 weeks x 10% disability = 18.5 compensable weeks at the rate of \$289.00 per week, making a total award of \$9,681.50.

The claimant is entitled to unauthorized medical expenses up to the statutory maximum and is entitled to future medical benefits only upon proper application to and approval by the Director.

The claimant's attorney fees are approved subject to the provisions of K.S.A. 44-536.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed against the respondent to be paid direct as follows:

BARBER & ASSOCIATES

Discovery Deposition of Alvin J. Hammerschmidt	\$ 172.40
Transcript of Stipulations	\$ 25.40
Deposition of Teresa Reynolds, M.D.	\$ 170.00
Deposition of David A. McQueen, M.D.	\$ 110.00
Deposition of Teresa Reynolds, M.D.	\$ 86.00
Transcript of Regular Hearing	\$ 121.00
Total	\$ 685.70

IT IS SO ORDERED.

Dated this ____ day of January, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Curtis E. Watkins, 410 North Main, Kingman, Kansas 67068
Jeffery R. Brewer, 300 West Douglas, Suite 500, Wichita, Kansas 67202-2909
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director